

Amend Regulation 1591 (Medicines and Medical Devices) to read as follows:

### **1591. Medicines and Medical Devices.**

(a) Definitions.

(1) Administer. . . . . (unchanged)

(2) Dispense. . . . . (unchanged)

(3) Furnish. . . . . (unchanged)

(4) Health Facility. "Health Facility" as used herein has the meaning ascribed to the term in section 1250 of the Health and Safety Code, ~~which provides that~~ and also includes "clinic" as defined in sections 1200 and 1200.1 of the Health and Safety Code.

(A) ~~As used in this chapter~~ Section 1250 of the Health and Safety Code provides that "health facility" means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer. ....

(B) Section 1200 of the Health and Safety Code provides that "clinic" means an organized outpatient health facility which provides direct medical, surgical, dental, optometric, or podiatric advice, services, or treatment to patients who remain less than 24 hours, and which may also provide diagnostic or therapeutic services to patients in the home as an incident to care provided at the clinic facility. A place, establishment, or institution which solely provides advice, counseling, information, or referrals on the maintenance of health or on the means and measures to prevent or avoid sickness, disease, or injury, where such advice, counseling, information, or referrals does not constitute the practice of medicine, surgery, dentistry, optometry, or podiatry, shall not be deemed a clinic for purposes of this subdivision.

(C) Section 1200.1 of the Health and Safety Code provides that "clinic" also means an organized outpatient health facility which provides direct psychological advice, services, or treatment to patients who remain less than 24 hours. As provided in section 1204.1 of the Health and Safety Code, such clinics serve patients under the direction of a clinical psychologist as defined in section 1316.5 of the Health and Safety Code, and are operated by a nonprofit corporation, which is exempt from federal taxation under paragraph (3), subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, and which is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds, or contributions which may be in the form of money, goods, or services. In such clinics, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. Such clinics may also provide diagnostic or therapeutic services authorized under Chapter 6.6 (commencing with section 2900) of Division 2 of the Business and Professions Code to patients in the home as an incident to care provided at the clinic facility.

(5) Pharmacist. . . . . (unchanged)

(6) Pharmacy. . . . . (unchanged)

(7) Prescription. . . . . (unchanged)

(A) . . . . . (unchanged)

(B) . . . . . (unchanged)

(C) . . . . . (unchanged)

(D) . . . . . (unchanged)

(E) . . . . . (unchanged)

(F) . . . . . (unchanged)

(8) Physicians, Dentists, Optometrists, and Podiatrists. . . . . (unchanged)

(9) Medicines. . . . . (unchanged)

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- (A) . . . . . (unchanged)
- (B) . . . . . (unchanged)
- (b) "Medicines." . . . . . (unchanged)
  - (1) Preparations and Similar Substances. . . . . (unchanged)
  - (2) Permanently Implanted Articles. . . . . (unchanged)
  - (3) Artificial Limbs and Eyes. . . . . (unchanged)
  - (4) Orthotic Devices. . . . . (unchanged)
    - (A) . . . . . (unchanged)
    - (B) . . . . . (unchanged)
    - (C) . . . . . (unchanged)
  - (5) Prosthetic Devices. . . . . (unchanged)
  - (6) Drug Infusion Devices. . . . . (unchanged)
- (c) Exclusions from the Definition of "Medicines." . . . . . (unchanged)
  - (1) . . . . . (unchanged)
  - (2) . . . . . (unchanged)
  - (3) . . . . . (unchanged)
- (d) Application of Tax—In General. . . . . (unchanged).
  - (1) . . . . . (unchanged)
  - (2) . . . . . (unchanged)
  - (3) . . . . . (unchanged)
  - (4) . . . . . (unchanged)
  - (5) . . . . . (unchanged)
  - (6) . . . . . (unchanged)
- (e) Specific Tax Applications.
  - (1) Prescriptions. . . . . (unchanged)
  - (2) Licensed Physician, Dentist Or Podiatrist. . . . . (unchanged)
  - (3) Health Facility. . . . . (unchanged)
  - (4) Pharmaceutical Manufacturer or Distributor. . . . . (unchanged)
  - (5) Antimicrobial Agents Used by Hospital Personnel. . . . . (unchanged)
  - (6) Vitamins, Minerals, Herbs, and Other Such Supplements. . . . . (unchanged)
  - (7) Diagnostic Substances, Test Kits, and Equipment. . . . . (unchanged)
- (f) Insurance Payments
  - (1) Medical Insurance and Medi-Cal. . . . . (unchanged)
  - (2) Medicare
    - (A) Medicare Part A. . . . . (unchanged)
    - (B) Medicare Part B. Tax applies to sales of items to a person in which payment is made pursuant to Part B of the Medicare Act. Sales made under Part B do not qualify as exempt sales to the United States Government even though the patient may assign the claim for reimbursement to the seller and payment is made by a carrier

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administering Medicare claims under contract with the United States Government. Under Part B, the seller does not have a contract with the United States Government. The contract is between the patient and the United States Government. Unless the sale is otherwise ~~non-taxable-exempt~~ (such as a sale of a medicine under subdivision (d)), the sale is subject to tax.

(3) Employer Medical Contracts. . . . . (unchanged)

(g) Records. . . . . (unchanged)

(1) . . . . . (unchanged)

(2) "Double Deduction" Unauthorized. . . . . (unchanged)

(3) Persons making purchases of items in which their sale or use is ~~not-taxable-exempt~~ under this regulation should give their suppliers an exemption certificate pursuant to Regulation 1667.

NOTE: Authority cited: Section 7051, Revenue and Taxation Code.

Reference: Sections 6006 and 6369 Revenue and Taxation Code, and sections 1200, 1200.1, 1204.1, and 1250 Health and Safety Code.